

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK WILLIAM PICKETT,

Defendant-Appellant.

UNPUBLISHED

June 24, 2003

No. 239272

Bay Circuit Court

LC No. 01-001113-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of unlawful use of an automobile, MCL 750.414, for which he was sentenced as an habitual offender, second offense, MCL 769.10, to three years' probation with the first 120 days in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in denying his motion for a mistrial. We review the trial court's ruling for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). "A motion for a mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to get a fair trial." *People v Lugo*, 214 Mich App 699, 704; 542 NW2d 921 (1995).

During direct examination, an officer volunteered that he recognized defendant from prior dealings with him. An unresponsive answer to a proper question is not usually error, *People v Measles*, 59 Mich App 641, 643; 230 NW2d 10 (1975), and does not provide a basis for declaring a mistrial absent some evidence that the prosecutor conspired with or encouraged the witness to give the testimony at issue. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). Here, there was no such evidence. Moreover, the remark was not particularly prejudicial because it did not indicate that the officer knew defendant because of his involvement in criminal activity, and the matter never came up again. Under the circumstances, this brief remark did not warrant a mistrial. *People v Griffin*, 235 Mich App 27, 37; 597 NW2d 176 (1999).

Defendant next contends that trial counsel was ineffective for failing to object to the imposition of certain costs as a condition of probation. Because defendant failed to raise his claim of ineffective assistance of counsel below in a motion for a new trial or an evidentiary

hearing, review is limited to the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000).

The court had the authority to require defendant to repay attorney fees as a condition of probation. MCL 771.3(2)(b), (6). Although the court may not impose costs “unless the probationer is or will be able to pay them during the term of probation,” MCL 771.3(7)(a), the court is not required to hold a hearing to determine whether the defendant has the ability to pay costs unless the defendant raises the issue at sentencing. *People v Music*, 428 Mich 356, 361-362; 408 NW2d 795 (1987).

The record shows that defendant had three and one-half years of college credit. At the time of trial, he was employed as a roofer. At the time of sentencing, he was employed part-time at a drywalling company. His attorney noted that defendant was “industrious” and regularly worked. Based on this record, there is nothing to indicate that defendant lacked the ability to pay attorney fees or other costs imposed as a condition of probation and thus there is no error apparent on the record. Therefore, defendant’s claim of ineffective assistance of counsel lacks merit. *People v Pratt*, 254 Mich App 425, 430; 656 NW2d 866 (2002).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette